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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 KIFA MUHAMMAD,
12 Plaintiff,
13 v.
14 SAN JOAQUIN COUNTY JAIL, et al.,
15 Defendant.
NO. CIV. S-02-6 LKK/CMK P
O R D E R

17 Plaintiff, a state prisoner proceeding pro se, has filed
18 this civil rights action seeking relief under 42 U.S.C. § 1983.
19 Plaintiff was incarcerated at the San Joaquin County Jail at all
20 times relevant to the complaint. Plaintiff is a practicing
21 Muslim, and in keeping with his faith, observes Ramadan, which
22 requires fasting during the day. Second Amended Complaint ("SAC")
23 at 1. He asserts that although he requested that accommodations
24 be made to allow him to avoid eating during the day and to eat
25 after sundown in 2001, jail officials ignored his requests for
26 special meals, and when they did provide bagged meals, did so only

1 for a couple of days.¹ Plaintiff also contends that jail official
2 refused to provide him Friday services for Muslims. He claims that
3 defendants violated his First Amendment rights, his Fourteenth
4 Amendment Due Process rights, and that these actions constituted
5 cruel and unusual punishment in violation of the Eight Amendment.
6 Pending before the court is defendants' motion for summary
7 judgment.

8 The matter was referred to a United States Magistrate Judge
9 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No.
10 262. On January 20, 2006, the magistrate judge filed findings and
11 recommendations ("F&Rs") finding that defendants have submitted
12 evidence which shows that plaintiff was offered a nighttime meal
13 after 7:00 p.m., that breakfast was served at 5:00 a.m., and that
14 plaintiff never requested that a Muslim spiritual leader visit the
15 County Jail and that a copy of the Koran is available at all times.
16 F&Rs at 5. The magistrate judge also found that plaintiff has not
17 set forth any evidence which creates a material, disputed fact as
18 to his claims. He explains that plaintiff's "conclusory
19 allegations in his responsive pleadings . . . will not do."
20 I cannot agree.

21 Plaintiff has filed a "declaration in support of his motion
22 and opposition to defendant's motion for summary judgment" which
23 creates triable factual issues. Plaintiff states in his
24

25 ¹ Plaintiff alleges that Ramadan lasts for 30 days. See
26 Compl. at 2. See also Ex. A to plaintiff's declaration filed
September 16, 2005.

1 declaration that he was fed "between 5:00 am and 6:00 am during
2 Oct. 1 through Nov. 1, 2001," at which time the "sun would have
3 been up." Dec. at 1:19-21. Further, plaintiff states that he was
4 "denied bag lunches [sic] after a couple of days." Id. at 1:24-25.
5 Plaintiff also submits his deposition which is replete with
6 testimony which disputes the evidence provided by defendants. See,
7 e.g., Dep. at 41:8-22 (plaintiff ate food that other inmates gave
8 him; County provided food trays "for a couple of days"); Dep. at
9 42:5-20 (sack meals or food trays were provided only occasionally
10 during Ramadan and all other food was provided by other inmates);
11 Dep. at 43:8-22 (plaintiff was disciplined for storing food in his
12 cell when no other food was provided); Dep. at 33:16-34:18
13 (plaintiff verbally requested religious services but was not
14 provided such services).

15 Accordingly, the court DECLINES to adopt the magistrate's
16 findings and recommendations. The matter is REMANDED to the
17 magistrate judge for further proceedings consistent with this
18 order.²

19 IT IS SO ORDERED.

20 DATED: March 30, 2006.

21 /s/Lawrence K. Karlton
22 LAWRENCE K. KARLTON
23 SENIOR JUDGE
24 UNITED STATES DISTRICT COURT

25 ² As a result of this order, the magistrate judge should
26 consider defendants' arguments regarding qualified immunity and
municipal liability.